IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

MONDAY, THE 1ST JANUARY 2007 / 11TH POUSHA 1928

SA.No. 622 of 2001()

AS.190/1992 of ADDL.DISTRICT COURT, THRISSUR
OS.864/1987 of II ADDL.M.C.,THRISSUR
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APPELLANT/3RD RESPONDENT/3RD DEFENDANT:

KERALA FINANCIAL CORPORATION, TRIVANDRUM
REPRESENTED BY ITS MANAGER (LEGAL).

BY ADV. SRI.V.B.UNNIRAJ

RESPONDENTS/APPELLANT & RESPONDENTS 1 & 2/PLAINTIFF & DEFENDANTS 1 & 2:
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1. A.S.MADHAVA MENON. S/O.ARIYAMPARAMBATH SREEDHARA MENON, PARIYARAM VILLAGE, MUNDAPURAM TALUK BY HIS MUKTHIAR HOLDER SRI.P.DIVAKARA MENON, S/O.PADINJAROOT PARVATHY AMMA,"CARBIDE HOUSE", KANJANI ROAD, AYYANTHOLE, THRISSUR -3.

2. STATE OF KERALA, REPRESENTED BY THE DISTRICT COLLECTOR, THRISSUR -3.

3. THE DEPUTY TAHSILDAR, REVENUE RECOVERY, KERALA FINANCIAL CORPORATION LTD., PALAGHAT.

R1 BY ADV. SRI.C.CHANDRASEKHARAN
R2, R3 BY GOVT. PLEADER SMT.LAKSHMI RANI

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 01/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN, J

S.A.No.622 OF 2001

Dated this the 1st day of January, 2007

JUDGMENT

1. This second appeal is by the third defendant Kerala Financial Corporation. The plaintiff availed a loan from it. That loan was supported by the subsidy offered by the first defendant State of Kerala. The subsidy agreement between the State of Kerala and the Kerala Financial Corporation failed and accordingly, the Kerala Financial Corporation demanded higher rate of interest from the plaintiff. The account led to revenue recovery proceedings. The suit was filed seeking a decree of perpetual prohibitory injunction against revenue recovery proceedings. The court of first instance dismissed the suit holding that there is a bar to suit under the Kerala Revenue Recovery Act and also that the third defendant is entitled to rate of interest as claimed.

2. The lower appellate court, in deciding the first appeal of the plaintiff, noticed that there was consensus between the parties

by that time that the rate of interest that could be charged by the third defendant Kerala Financial Corporation was only 5.5% as far as the account is concerned because the transaction was supported by a subsidy agreement between the Kerala Financial Corporation and the State of Kerala. It was also noticed that in view of the said proposition, there has to be a re-accounting by the third defendant Kerala Financial Corporation by giving credit to the excess interest, if any, paid. However, the lower appellate court also directed that credit shall be given to subsidy amount provided by the Government. It is this direction of the first appellate court, regarding adjustment of the subsidy amount, that has led the Kerala Financial Corporation to file this second appeal.

3. After having heard counsel for parties, it is found necessary to determine this second appeal on the following substantial questions of law:

(i) Is the third defendant appellant entitled to any interest from the plaintiff at any rate over and above

5.5% ?

(ii) Is the third defendant bound to give credit to any subsidy amount that it receives from the Government ?

4. As already noticed, the plaintiff obtained a loan from the third defendant. The rate of interest at 5.5% was agreed to between the parties following the subsidy agreement between the State of Kerala and the Kerala Financial Corporation. By virtue of such an agreement, subsidy regarding the interest component will have to be paid by the State of Kerala to the Kerala Financial Corporation. This means that the interest at the rate of 5.5% agreed to between the Kerala Financial Corporation and the plaintiff is the rate that the Kerala Financial Corporation would charge with the support of the subsidy facility by the State of Kerala. Hence the rate of interest that could be charged by the Kerala Financial Corporation is only 5.5% so long as the plaintiff is entitled to the benefit of the subsidy agreement between the State of Kerala and the Kerala Financial Corporation. It is not in dispute that the loan was

availed of by the plaintiff while the subsidy agreement between the State of Kerala and the Kerala Financial Corporation was in force. This means that the Kerala Financial Corporation is entitled to contribution by the State of Kerala to the extent of the interest that it has slashed in the case of the plaintiff. As a corollary, it also means that the Kerala Financial Corporation is not obliged to give credit to any subsidy it receives, except to the extent it is required to sustain recovery of interest from the plaintiff to be only at 5.5%.

5. As has been held by this Court in **Mathew** v. **Kerala Financial Corporation** {1989 (1) KLT 904}, once the Kerala Financial Corporation, a public undertaking has entered into a contract with the plaintiff, the Kerala Financial Corporation has to be tied down to the rate of interest to which it has agreed to and it cannot be permitted to enhance the said rate depending upon the State of Kerala resiling out of its obligations under the subsidy agreement. The loan that the

plaintiff had availed is essentially that it took acting on the promise of the State of Kerala to provide interest contribution to Kerala Financial Corporation in excess of 5.5% and the Kerala Financial Corporation's offer to collect from the plaintiff interest only at the rate of 5.5%. This means that the Kerala Financial Corporation will be entitled to charge interest only at 5.5% from the plaintiff while it will not be liable to give credit to any subsidy amount it receives from the Government. The impugned judgment of the lower appellate court requires to be modified in the aforesaid extent.

6. In the result, the second appeal is partly allowed and the direction in the decree of the lower appellate court holding that the third defendant Kerala Financial Corporation is entitled to interest only at 5.5% per annum on the loan availed by the plaintiff is confirmed and the direction to give credit to the subsidy amount, if any, provided by the Government is vacated. Following this second appeal decree, the Kerala Financial Corporation will forthwith give effect to the

directions in the decree of the lower appellate court as modified hereby. It is also clarified that the judgment and decree of the lower appellate court and this judgment and decree touch only the rate of interest and not as to whether it is simple or compound, such question being dependent on the contract between the parties. No costs.

THOTTATHIL B.RADHAKRISHNAN
Judge

kkb.

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THOTTATHIL B. RADHAKRISHNAN, J

S.A.NO.622 OF 2001

JUDGMENT

1st JANUARY, 2007.

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